



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, COUNCIL 93

Petitioner

and

COOS COUNTY NURSING HOSPITAL

Respondent

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CASE NO. M-0521

DECISION NO. 86-40

APPEARANCES

Representing the Petitioner, AFSCME, Council 93

Dean B. Eggert, Esq. Counsel  
H. Ross Ferrell, International Representative, AFSCME  
James Guyett, N.H. Representative, AFSCME

Representing the Respondent, Coos County Nursing Hospital

Alan Hall, Esq., Counsel  
Frederick King, Administrator  
Suzanne Collins, Comptroller

BACKGROUND

A petition for certification of a unit to include all full-time and part-time positions within the departments of Administration, Dietary, Maintenance, Nursing, Laundry, Housekeeping, Physician, Pharmacy, Recreation and Rehabilitation, Coos County Nursing Hospital, West Stewartstown Facility, was filed on November 18, 1985 by the American Federation of State, County and Municipal Employees, Council 93 (AFSCME).

Counsel for Coos County (County) took exceptions to the incorrect designations of several job classifications and to the inclusion of the In-Service Training Coordinator and the Social Service Director positions.

In an effort to expedite the election process, Counsel for the County and the Representative for AFSCME requested that a pre-election conference be held and any dispute on positions be challenged and resolved by PELRB hearing at a later date should the challenges be dispositive of the outcome.

A pre-election conference was held in the PELRB office on February 4, 1986 with Executive Director Evelyn LeBrun as Hearing Officer. No agreement was reached by the parties on inclusion or exclusion of two (2) accountant positions, (issue raised at the pre-election conference), the In-Service Training Coordinator and the Social Service Director.

After review of the job specifications, the Hearing Officer ruled that the position of Accountant would be included in the unit and the positions of In-Service Training Coordinator and the Social Service Director would be excluded as professional employees. Ruling was based on the facts that, (1) the registered nurses were, by agreement of the parties, excluded from the unit, (2) the job classification for the In-Service Training Coordinator required that the person be a graduate of an approved school of nursing and be registered in the State of N.H. with experience in work as a Staff Nurse or Charge Nurse; and, (3) the qualification requirements for the Social Service Director called for a bachelor's degree from a program in social service area.

The County objected to the exclusion and preserved its rights to challenge the ruling and present arguments to the full Board.

The election was set for February 26, 1986 and the cut-off date for changes on the voting list was set as the election day.

Due to illness, the election date was postponed and election held on March 5, 1986 with three ballots challenged; i.e., one employee whose probationary period expired on March 1, 1986, the In-Service Training Coordinator and the Social Service Director. Results were: 33 votes for AFSCME, 32 votes for "No Representative". Hearing no objection to opening of the ballot from the full-time employee who had completed her probationary period on March 1st and that challenge affecting the outcome of the election, the ballot was opened and resulted in a vote of 34 to 32 in favor of AFSCME. The other two ballots remained sealed pending a hearing before the full Board of the Public Employee Labor Relations Board.

A hearing was held on April 10, 1986 for the purpose of dealing with the "objections to the conduct of the election and the conduct affecting the outcome of the election" held at the Coos County Nursing Hospital March 5, 1986.

#### FINDINGS OF FACT AND RULINGS OF LAW

Two issues were identified:

- (1) Two positions were excluded from the proposed unit at the Pre-Election hearing: the "In-Service Training Coordinator" and the "Social Services Director", by the hearing officer. Both persons voted on March 5; ballots were sealed and remain so; the County argues that those two positions must be included in the unit since identical positions are included in the Berlin facility unit.
- (2) One employee, Mary Lakin, was permitted to vote at the election, under challenge, even though her name did not appear on the original voter list for the election originally scheduled for February 26, 1986 since she was a probationary employee at that time, but no longer probationary on March 5, 1986.

The County argues that the opening of the Lakin ballot constitutes a violation of PELRB rules 303.06, requiring that "all elections shall be by secret ballot"...thereby invalidating the election. At the hearing, testimony was received from the Coos County Administrator that the positions of "In-Service Training Coordinator", West Stewartstown, is the same as the "In-Service Training Coordinator" included in the unit in Berlin and that the "Social Services Director" at West Stewartstown is identical to the "Social Services" position included in the unit in Berlin.

The PELRB record indicates that the Union did ask to have these positions excluded in the Berlin unit on the grounds that these employees were supervisors but, the PELRB Decision No. 85-01 includes both positions in the unit, obviously agreeing with the County that the positions are not supervisory.

Job classifications submitted by the County (County Exhibits 9 and 10) for the positions of "Social Services Director" and "In-Service Coordinator" for West Stewartstown indicate:

- (a) The Social Services Director must be a college graduate in the social service area, must work with an "interdisciplinary team planning patient care" and must "organize and plan social services" (Exhibit #10) in addition to other duties;
- (b) The "In-Service Coordinator" must be a graduate of an approved school of nursing and be registered in the State of New Hampshire and will "organize, plan and direct in-service training for patient care personnel, in cooperation and participation with other department heads outside specialists". (County Exhibit 9)

The PELRB finds that both positions are "Professional Positions" meaning that they do carry with them a significant amount of personal discretion in carrying out their job skills, skills which require long periods of education and specialized training. As such, those positions cannot be routinely included in a unit composed of other than professional employees.

With respect to the Lakin vote and the opening of the Lakin ballot:

- (a) testimony revealed that Mary Lakin became a permanent employee on March 1, 1986 and should therefore be eligible to vote, the delayed election cannot be considered her fault, and,
- (b) the PELRB, in overseeing the conduct of the election must be in a position to resolve any errors in the voting list which come to its attention as well as the basic question of whether or not the employees have chosen an exclusive representative if the vote is so close as to require determination of the validity of a challenged ballot (see PELRB 303.08 (a) "the Board shall determine the validity of any challenged votes following the election, but only if the number of challenged votes is sufficient to affect the results of election). In addition, this same rule recognizes that it may be impossible to maintain the secrecy of the challenged ballot by admonishing the PELRB to "make every effort to maintain the confidentiality of the votes cast."

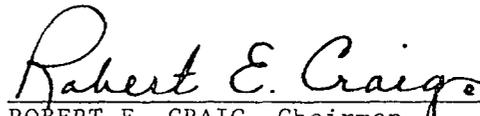
With respect to the County's request for Findings of Fact and Rulings of Law:

1. Granted that legal doctrines of Res Judicata and Collateral Estoppel may apply to decisions of the PELRB; however, the mere existence of similar titles of superficially appearing identity of questions will not result in automatic decisions as far as unit determinations or similar questions are concerned.

2. Granted to the extent that the Board does not find changed circumstances and that the matter does not apply to different units even if the parties are the same.
3. Denied.
- 4-5-6-7-8-9-10-11-12-13-14-15-16-17. Granted.
18. Granted with the exception that they are not the same in that the unit in question for which the representation is made is different.
- 19-20-21-22 Denied.
23. Granted.
24. Granted, however the Board is not bound by mere titles or definitions of jobs. Also, the Board has the right and duty to make specific findings on each unit determination. In some cases, the Board may change its mind or attempt to correct a mistake, although it is not conceding that that is the case in this case.
25. Denied.
- 26-27-28-29-30-31 Granted.
- 32-33-34 Denied.

DECISION AND ORDER

- (1) The results of the election (34 to 32 in favor of AFSCME) at the Coos County Nursing Hospital, West Stewartstown, are hereby upheld;
- (2) The "In-Service Coordinator" and "Social Services Director" positions are excluded from the unit as professionals;
- (3) The vote of Mary Lakin and the handling of the challenge under the circumstances was valid and is upheld.

  
ROBERT E. CRAIG, Chairman

Signed this 20th day of June, 1986

By unanimous vote. Chairman Robert E. Craig presiding. Members Richard Roulx and Richard Molan present and voting. Also present Evelyn C. LeBrun, Executive Director.